



OFFICE OF THE POLICE COMMISSIONER

ONE POLICE PLAZA • ROOM 1400

June 16, 2023

Memorandum for: Deputy Commissioner, Trials

Re: **Inspector Jesse Lance**  
Tax Registry No. 923789  
Housing Borough Brooklyn  
Disciplinary Case No. 2021-24423

**Police Officer Corey Johnson**  
Tax Registry No. 960090  
77 Detective Squad  
Disciplinary Case No. 2021-24426

The above named members of the service appeared before Assistant Deputy Commissioner Jeff S. Adler on February 16 and March 2, 2023, and was charged with the following:

**DISCIPLINARY CASE NO. 2021-24423**

1. Inspector Jesse Lance, on or about June 4, 2020, at approximately 22:15, while assigned to Housing Borough Brooklyn, and on duty, in the vicinity of Washington Avenue, between Fulton Street and Atlantic Avenue, Kings County, wrongfully used force, in that he struck Kedwin Payamps multiple times with a baton without police necessity.

**P.G. 221-02, Page 2, Prohibition 11**

**USE OF FORCE**

2. Inspector Jesse Lance, on or about June 4, 2020, at approximately 22:15, while assigned to Housing Borough Brooklyn and on duty, in the vicinity of Washington Avenue, between Fulton Street and Atlantic Avenue, Kings County, wrongfully used force, in that he used physical force against Kedwin Payamps, in that he grabbed and pushed Kedwin Payamps without police necessity.

**P.G. 221-02, Page 2, Prohibition 11**

**USE OF FORCE**

3. Inspector Jesse Lance, on or about August 11, 2021, at approximately 13:21, while assigned to Housing Borough Brooklyn and on duty, in the vicinity of 100 Church Street, New York County provided a misleading official statement to the CCRB, in that he stated that he was unable to identify himself as the officer striking Mr. Payamps with the baton in the video of the incident, despite identifying himself as the subject officer in still photographs of the same incident.

**P.G. 304-10**

**MAKING FALSE STATEMENTS**

**DISCIPLINARY CASE NO. 2021-24426**

1. Police Officer Corey Johnson, on or about June 4, 2020, at approximately 22:15, while assigned to 077 Detective Squad and on duty, in the vicinity of Washington Avenue, between Fulton Street and Atlantic Avenue, Kings County, wrongfully used force, in that he pushed Nicholas Pinto without police necessity.

**P.G. 221-02, Page 2, Prohibition 11**

**USE OF FORCE**

2. Police Officer Corey Johnson, on or about September 8, 2021, at approximately 11:09, while assigned to 077 Detective Squad and on duty, in the vicinity 100 Church Street, New York County, provided a misleading official statement to the CCRB in that he stated that he did not recognize himself or any officers depicted in the video of the incident, despite identifying himself as the subject officer in still photographs of the same incident.

**P.G. 304-10**

**MAKING FALSE STATEMENTS**

In a Memorandum dated March 28, 2023, Assistant Deputy Commissioner Jeff S. Adler found Inspector Jesse Lance not guilty of all Specifications in Disciplinary Case No. 2021-24423, and Police Officer Corey Johnson was found guilty of Specification No. 1 and not guilty of Specification No. 2 in Disciplinary Case No. 2021-24426. Having read the Memorandum and analyzed the facts of this matter, I approve the findings for Inspector Lance and Police Officer Johnson, but disapprove the penalty for Police Officer Johnson.

After reviewing the facts and circumstances of this matter, I have determined that the mitigated penalty under the Disciplinary System Penalty Guidelines is warranted. Therefore, Police Officer Johnson shall forfeit five (5) vacation days, as a disciplinary penalty.

  
Keechant L. Sewell  
Police Commissioner



POLICE DEPARTMENT

March 28, 2023

-----X  
In the Matter of the Charges and Specifications  
- against -

Inspector Jesse Lance  
Tax Registry No. 923789  
Housing Borough Brooklyn

Case No.  
2021-24423

Police Officer Corey Johnson  
Tax Registry No. 960090  
77 Detective Squad

Case No.  
2021-24426  
-----X

At: Police Headquarters  
One Police Plaza  
New York, NY 10038

Before: Honorable Jeff S. Adler  
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU: Nicole Jardim and Amanda Rodriguez, Esqs.  
Civilian Complaint Review Board  
100 Church Street, 10<sup>th</sup> Floor  
New York, NY 10007

For Respondent Lance: Louis C. La Pietra, Esq.  
La Pietra & Krieger, P.C.  
30 Glenn Street, Suite 105  
White Plains, NY 10603

For Respondent Johnson: John Tynan, Esq.  
Worth, Longworth & London, LLP  
111 John Street, Suite 640  
New York, NY 10038

To:

HONORABLE KEECHANT L. SEWELL  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NY 10038

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## CHARGES AND SPECIFICATIONS

### Disciplinary Case No. 2021-24423

1. Inspector Jesse Lance, on or about June 4, 2020, at approximately 2215, while assigned to Housing Borough Brooklyn, and on duty, in the vicinity of Washington Avenue, between Fulton Street and Atlantic Avenue, Kings County, wrongfully used force, in that he struck Kedwin Payamps multiple times with a baton without police necessity.

P.G. 221-02, Page 2, Prohibition 11

USE OF FORCE

2. Inspector Jesse Lance, on or about June 4, 2020, at approximately 2215, while assigned to Housing Borough Brooklyn, and on duty, in the vicinity of Washington Avenue, between Fulton Street and Atlantic Avenue, Kings County, wrongfully used force, in that he used physical force against Kedwin Payamps, in that he grabbed and pushed Kedwin Payamps without police necessity.

P.G. 221-02, Page 2, Prohibition 11

USE OF FORCE

3. Inspector Jesse Lance, on or about August 11, 2021, at approximately 1321, while assigned to Housing Borough Brooklyn, and on duty, in the vicinity of 100 Church Street, New York County, provided a misleading official statement to the CCRB in that he stated he was unable to identify himself as the officer striking Mr. Payamps with the baton in the video of the incident, despite identifying himself as the subject officer in still photographs of the same incident.

A.G. 304-10

MAKING FALSE STATEMENTS

### Disciplinary Case No. 2021-24426

1. Police Officer Corey Johnson, on or about June 4, 2020, at approximately 2215, while assigned to the 077 Detective Squad and on duty, in the vicinity of Washington Avenue, between Fulton Street and Atlantic Avenue, Kings County, wrongfully used force, in that he pushed Nicholas Pinto without police necessity.

P.G. 221-02, Page 2, Prohibition 11

USE OF FORCE

2. Police Officer Corey Johnson, on or about September 8, 2021, at approximately 1109, while assigned to the 077 Detective Squad, and on duty, in the vicinity of 100 Church Street, New York County, provided a misleading official statement to the CCRB in that he stated he did not recognize himself or any officers depicted in the video of the incident, despite identifying himself as the subject officer in still photographs of the same incident.

A.G. 304-10

MAKING FALSE STATEMENTS

## REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on February 16 and March 2, 2023. Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. The CCRB called Nicholas Pinto, Kedwin Payamps, and CCRB Investigator McKenzie Dean as witnesses, and introduced into evidence video footage of the incidents. Respondents testified on their own behalves. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having evaluated all of the evidence in this matter, I find as follows:

Respondent Lance:

Specifications 1 and 2 (force): Not Guilty

Specification 3 (misleading statement): Not Guilty

Respondent Johnson:

Specification 1 (force): Guilty

Specification 2 (misleading statement): Not Guilty

Recommended penalty for Respondent Johnson: Three (3) vacation days.

## ANALYSIS

The charges against these two Respondents stem from their interactions with two separate individuals at approximately 2215 hours on the evening of June 4, 2020. Respondents were in the vicinity of Washington Avenue and Fulton Street in Kings County, in connection with protests that were occurring throughout the city at the time. It is alleged that Respondent Johnson wrongfully pushed Nicholas Pinto that evening, and that Respondent Lance wrongfully struck Kedwin Payamps multiple times with a baton, and also pushed Payamps without police

necessity. Both Respondents also are charged with making misleading statements during their official interviews with the CCRB, in that they erroneously claimed that they were unable to recognize themselves in the video footage of the incident.

Nicholas Pinto, who was in Canada at the time of the trial, testified remotely regarding his interaction with police officers at the location. Pinto, a journalist, was on assignment for WNYC Gothamist covering the protests that evening. He used his bicycle to ride to different protest locations throughout the night. As a credentialed journalist, Pinto was exempt from the curfew that was in effect, with the understanding that he not interfere in police work. Pinto was wearing a white t-shirt, bicycle helmet, and had his press credential hanging around his neck. Near the corner of Washington and Fulton, he observed police officers, with their batons out, pushing protesters out of the intersection, since it was past curfew and the protesters were not obeying the police commands to disperse. Pinto testified that he attempted to position himself at a safe distance from the intersection near some trash bags, and used his phone to try to record what was occurring. (Tr. 119-22, 130-36)

As he was attempting to record, Pinto was pushed backward. He fell to the ground near the trash bags, and an officer extended their hand to help Pinto back to his feet. Pinto testified that as he attempted to maneuver around the garbage bags to move away from the police, he was again pushed from behind; he did not know who pushed him, but there were police officers standing all around him. Pinto fell forward into another police officer and briefly went to his knees, then was able to get back up and move away with his bicycle to a safer area. Pinto did not seek medical treatment. (Tr. 122-24, 129-30, 136-42)

Video footage posted by an individual on Twitter captured the sequence of events described by Pinto. (CCRB Ex. 1) At about the 0:15 mark of that footage, Pinto, can be seen

falling backward onto some trash bags. At 0:26, he gets back on his feet with his bicycle in his hands, and as he turns and begins to move away, Pinto is pushed from behind by more than one police officer, one of whom is Respondent Johnson (CCRB Ex. 1 at 0:28). As a result of the pushes, an off-balance Pinto falls into a sergeant who has a baton in his hand, and Pinto goes back to the ground. Pinto quickly stands back up and walks away.

Kedwin Payamps testified that at the time of the incident, he was riding his bicycle to the home of his child's mother. He was wearing a dark, navy shirt, with a bookbag on his back. At the intersection of Washington and Fulton, he observed police officers pushing and cursing at protesters. Payamps stopped for approximately five minutes to watch what was happening. From behind, he heard a voice telling him to "get the fuck out of here," so he started walking away with his bicycle between his legs. According to Payamps, a tall police officer in a white shirt struck his bicycle with a baton, and then struck Payamps hard on his right side, from his waist up into the neck/shoulder area. Some of the blows from the baton struck his backpack as well. In total, Payamps estimated that he was struck with the baton more than five times; he stated that several of those strikes were not captured by the video footage, since they occurred before the start of the video. Payamps asked the officers what he had done, but received no response. Instead, Payamps was held against a fence for a couple of seconds, then forcibly swung to the ground where an officer kneeled on his back. He received multiple strikes with an object below his waist from an unknown officer, was handcuffed, placed in a police van, and transported to the precinct. (Tr. 148-54, 162-69, 172-75, 178-84)

After he was released from the precinct with a summons, Payamps went to Methodist Hospital, because he was having difficulty walking. At the hospital, x-rays were taken and he was given pain-relief medication. Payamps testified that he also complained that he was



experiencing pain to the right side of his head, and in his shoulder/neck area. About two weeks later, Payamps went to a medical center to receive physical therapy for his right leg; he did not seek treatment, or complain of pain, for any injuries connected to his right torso or shoulder area. A copy of his medical records from Methodist Hospital (CCRB Ex. 8) state that his chief complaint was “multiple bruises to both lower extremities,” though the records also indicate right shoulder pain. (Tr. 155-56, 160-62, 168, 172-74)

According to Payamps, the summons was dismissed a couple of weeks after the incident. Payamps has a civil lawsuit pending against Respondent Lance. (Tr. 155, 157)

Video footage posted on the New York Times website, which is essentially the same as the footage in CCRB Ex. 1, captured the interaction between Respondent Lance and Payamps. (CCRB Ex. 7; Resp. Ex. A (slowed-down version)) At about the 0:04 mark, Payamps can be seen reaching out with his left arm toward Respondent Lance, who is wearing a white shirt and a helmet, and is walking behind Payamps. Payamps is straddling his bicycle as he moves away from Respondent Lance. Respondent Lance appears to strike Payamps’ backpack two times with his baton. Payamps turns and asks, “What did I do?” Respondent Lance maneuvers Payamps against a fence; Payamps latches on to the fence with his left hand in order to prevent being brought down. Other police officers grab control of Payamps, pull him away from the fence, and bring him to the ground.

CCRB Investigator McKenzie Dean testified that from reviewing the video footage, as well as photographs of the incident taken by an individual at the scene (Dept. Ex. 2), and conducting interviews with several police officers, she was able to identify both Respondents. Dean then separately conducted official interviews with each Respondent. On August 11, 2021, she interviewed Respondent Lance remotely; a transcript of that interview was introduced into



evidence (CCRB Ex. 6). Dean's remote interview with Respondent Johnson occurred on September 8, 2021; the transcript of that interview was admitted into evidence as well (CCRB Ex. 4). (Tr. 42, 50, 55-57, 102)

During their interviews, both Respondents repeatedly stated that they could not recall the incident. Dean showed them the video footage from the incident (CCRB Exs. 1 & 7), but neither Respondent was able to definitively identify himself from the video. Dean acknowledged that the footage was dark, and that she was showing the video to them remotely, rather than in-person. Respondent Johnson specifically complained that the video was "blurry." Dean also showed the photographs from the incident (CCRB Ex. 2) to each Respondent, who then were able to identify themselves. However, even after seeing those photographs, neither Respondent could specifically recollect this particular incident, or identify themselves in the video. (CCRB Ex. 4 at 18-19, 32-34; Ex. 6 at 24-27; Tr. 53, 62-63, 65-69, 73-74, 76-78, 81-82, 103-07, 112-13)

Respondent Johnson testified that on the day of the incident he was directed to multiple precincts in response to protests. He repeatedly encountered out-of-control, violent behavior, as people were throwing bottles and bricks, and ramming bicycles into police officers, who were greatly outnumbered. At approximately 2215 hours, he responded to Washington and Fulton to assist with crowd control of more than 200 protesters, who were in the streets and on the sidewalks past the curfew despite repeated announcements over a loudspeaker instructing them to disperse. At the direction of supervisors, Respondent Johnson ordered people to clear the streets and move onto the sidewalks. (Tr. 201-10, 236-37)

As he was attempting to get people to disperse, Respondent Johnson observed several officers involved in the arrest of Payamps, though at the time he did not know the identity of the arrestee or any of the officers involved. Respondent Johnson testified that he observed Pinto on

the ground positioned on some trash, about five feet away from where Payamps was being arrested; Respondent Johnson conceded that Pinto was not acting in a violent or threatening manner. As Pinto stood up, Respondent Johnson ordered him to get back; Pinto was within arm's reach of Respondent Johnson, who did not, at the time, realize that Pinto was a member of the press. Respondent Johnson reached out his arm in order to move Pinto away, pushing him from behind in his shoulder area. According to Respondent Johnson, he had no ill-intent to hurt Pinto, and was using the least intrusive force against him in order to clear the area. Pinto fell forward into another officer and went down to the ground, then popped right back up and proceeded to move away from the area. (Tr. 211-20, 237-39, 242-46)

On September 8, 2021, approximately 15 months after the incident, Respondent Johnson was interviewed remotely by the CCRB; the investigators were at their homes, while Respondent Johnson was situated in front of a laptop computer at the offices of the CCRB. Respondent Johnson testified that he was shown the video footage from the incident, but was unable to identify himself, as the video he viewed was dark and blurry. He did identify himself in a photograph that was shown to him after it was enlarged. Having subsequently reviewed the video and investigative notes for this matter, Respondent Johnson now recalls the incident. (Tr. 211, 222-30, 234)

Respondent Lance testified that in the days surrounding this incident, he was working extended shifts, handling multiple protests, as well as several shootings. In addition to his regular responsibilities as the Housing Borough Commander, he was responding from scene-to-scene where officers needed assistance throughout Brooklyn, and was involved in hundreds of encounters. On the day of the incident, Respondent Lance worked a 20-hour shift. As such, when he was interviewed remotely by the CCRB on August 11, 2021, approximately 14 months

after the incident, he could not recall this particular encounter, which lasted approximately 20 seconds and was “unremarkable.” At that interview, he did not deny being at this incident, but merely indicated that he could not definitively state that he was the officer depicted in the video footage that was shown to him, which was extremely dark as he viewed it on a laptop.

Respondent Lance did, however, identify himself in the photograph that was shown to him.

Since the date of that interview, Respondent Lance has viewed the video footage hundreds of times, and reviewed approximately 1,600 pages of discovery, and now recalls the incident. (Tr. 253-58, 281, 292, 312-14; Resp. Ex. A)

According to Respondent Lance, the scene at Washington and Fulton was chaotic, with bottles being thrown and bicycles being used by protesters to obstruct officers. Protesters were playing a “cat and mouse” game, using their bicycles as barriers, moving away to evade apprehension by the police, then returning to obstruct again. Respondent Lance testified that he initially observed Payamps in the street obstructing police officers with his bicycle. (Tr. 259, 282-83, 286, 304-08)

When Payamps moved to the sidewalk, Respondent Lance attempted to effect a lawful arrest for obstruction and disobeying the curfew. Respondent Lance extended his left hand in order to grab control of Payamps, but Payamps bladed his body and pushed Respondent Lance’s arm as he attempted to get away. In an effort to gain compliance, Respondent Lance used his baton to strike Payamps’s backpack two times; he testified that he deliberately avoided striking Payamps in the body in order to cause the least amount of damage. Respondent Lance insisted that his entire interaction with Payamps was captured by the video footage, and that the only two times he swung his baton were the two strikes in the backpack. Respondent Lance then grabbed Payamps with both hands, but Payamps continued to resist by grabbing onto a fence. Other

police officers moved in to assist, and brought Payamps to the ground. Respondent Lance had no further involvement with Payamps, and moved on to deal with other protests, as well as a shooting that occurred a few hours later. He did not instruct the arresting officer regarding the arrest charges, and only later learned that Payamps had been issued a summons for disobeying the curfew. (Tr. 259-60, 264-66, 268-78, 287-93, 296-97, 302, 309-11)

Both Respondents face charges of wrongfully using force, and for making misleading statements during their CCRB interviews. These allegations will be considered separately.

### *Force charges*

#### Respondent Lance

Specification 1 charges Respondent Lance with wrongfully striking Kedwin Payamps with a baton; the parties are in agreement that this charge relates only to the two baton strikes captured in the video footage, and not the strikes that Payamps alleged occurred before then. Specification 2 charges Respondent Lance with wrongfully grabbing and pushing Payamps. Section 221-01 of the Patrol Guide states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or when it is reasonable to place a person in custody or to prevent escape from custody. Any application of the use of force must be reasonable under the circumstances.

In support of the allegations, the CCRB relies primarily on the trial testimony of Payamps, in conjunction with the video footage of the incident (CCRB Exs. 1 & 7). Payamps has a civil lawsuit pending against Respondent Lance, giving him a motive to embellish his account and minimize his own wrongdoing. He claimed that he was merely standing at the location for five minutes observing the protests when he was confronted by Respondent Lance for no reason, and struck multiple times with a baton.

Respondent Lance, in contrast, testified in a detailed, logical manner about his encounter with Payamps, and I credit his account. He did not randomly confront Payamps just for standing in the area; rather, he observed Payamps in the street using his bicycle to obstruct police officers, before retreating as part of the “cat and mouse” game engaged in by many protesters. Based on his observations of Payamps, Respondent Lance determined to have him placed under arrest, and confronted Payamps on the sidewalk for that purpose. Payamps resisted Respondent Lance’s efforts to do so, first pushing his arm away, then trying to walk off. In order to gain compliance, Respondent Lance used his baton to strike Payamps’s backpack two times; I credit Respondent Lance’s testimony, corroborated by the video footage, that he was particularly careful to strike the backpack, as opposed to Payamps’s body, in order to use the minimal amount of force necessary under the circumstances. When Payamps continued to walk away, Respondent Lance grabbed Payamps with his hands and maneuvered him against a fence. Payamps latched onto the fence, refusing to yield his hands, until other police officers pulled him away and brought him to the ground, where he was placed in handcuffs. Payamps was charged only with disobeying the curfew, a charge which was later dismissed, but Respondent Lance was not involved in the arrest processing, including the decision regarding the specific arrest charges.

In assessing the actions of Respondent Lance, it is important to keep in mind the chaotic context in which this encounter occurred. Respondent Lance was attempting to effect a lawful arrest in the middle of a violent crowd that was throwing bottles and acting hostilely toward the police. The individual he was trying to take into custody was resisting Respondent Lance’s efforts to do so. Under the specific circumstances presented here, Respondent Lance’s measured acts to overcome the resistance of Payamps constituted a reasonable use of force. Accordingly, I find Respondent Lance not guilty of Specifications 1 and 2.

Respondent Johnson

Specification 1 charges Respondent Johnson with wrongfully pushing Nicholas Pinto without police necessity. As indicated above, any application of the use of force must be reasonable under the circumstances.

Pinto testified in a consistent and logical manner about the incident. He described how as a credentialed member of the press, he was permitted to be out past the curfew, as long as he did not interfere with the work of the police. Indeed, his press credential, which he was wearing around his neck, is visible in the video footage (CCRB Ex. 1 at 0:27) and photographs (CCRB Ex. 2R) in evidence. Pinto stood on the sidewalk near some trash bags, as he attempted to observe the interactions between the protesters and the police from a safe distance. While standing there, he was pushed to the ground by an unknown person, then struggled back to his feet. Pinto described how as he turned to walk away, he again was pushed from behind; he fell into another officer before going to his knees. Pinto returned to his feet and was able to move away to a safe location. He did not claim to have suffered any physical injuries, though the incident was somewhat traumatic for him. Pinto's testimony was straightforward and did not appear to be embellished, and I credit his account of what occurred.

Moreover, the video footage corroborates his description of events. Pinto can be seen standing up after he is initially pushed to the ground. He turns and begins to walk away, and does not appear to be interfering with the arrest of Payamps, when Respondent Johnson pushes him from behind (CCRB Ex. 1 at 0:28). When he is pushed, not only does Pinto not appear to be presenting any danger to the police, he is following their directives to leave the location.

As discussed above, this Tribunal is mindful of the extraordinarily difficult and dangerous conditions that Respondent Johnson and his fellow officers faced that evening. Also,

I credit Respondent Johnson's testimony that he was not intending to injure Pinto with the push, and was merely trying to clear the area. Nevertheless, under these specific circumstances, his push from behind was gratuitous and unreasonable. Pinto, who was complying with the order to disperse, was shoved by Respondent Johnson without police necessity; the push knocked him off-balance into another officer, and he fell back to the ground. Accordingly, I find Respondent Johnson guilty of Specification 1.

*Misleading statements charges*

Specification 3 charges Respondent Lance with providing misleading official statements to the CCRB, while Respondent Johnson faces the same allegation under Specification 2 of his charges. Section 304-10 of the Administrative Guide defines a misleading statement as one that is intended to misdirect the fact finder, and materially alter the narrative, by making repeated claims of "I do not remember" or "I do not know" when a reasonable person under similar circumstances would recall, or have been aware of, such material facts.

Both Respondents were interviewed more than one year after the incident: Respondent Lance on August 11, 2021, and Respondent Johnson on September 8, 2021. Each of them stated throughout their respective interviews that they could not recall this particular incident. Viewing the video footage, which they described as dark and blurry, did not refresh their recollections; they still could not recall the incident, or identify themselves or other officers in the video. They also were shown photographs of themselves at the location: both Respondents did identify themselves in the photographs, but continued to maintain that they did not recall the incident itself and could not definitively identify themselves in the video footage. Sometime after their interviews, after reviewing the video multiple times as well as the discovery material, they both were able to recall the incident, identify themselves in the video, and testify about it at trial.



Given the passage of time between the incident and the CCRB interviews, and after having carefully reviewed the video footage myself, I credit the testimony of each Respondent that they genuinely could not recall this matter at the time of the interviews, and that they could not definitively identify themselves or other officers in the dark video footage. In June 2020, they both worked extended shifts and were involved in multiple encounters involving the protests. As Respondent Lance explained, the days “bled into one another.” (Tr. 281) The encounters in this particular case, which were brief in duration, did not stand out for them. Even after the protests, more than a year passed before the interviews, during which time each Respondent continued to engage in police work. Under the totality of these circumstances, it is not unreasonable that both Respondents were unable to recall this incident, or identify themselves in the video footage, during their remote CCRB interviews.

The CCRB has the burden of proving, by a preponderance of the credible evidence, that each Respondent was being intentionally misleading in their responses during their interviews. The record has failed to do so, and I find both Respondents not guilty of making misleading statements.

### PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department’s Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent Johnson’s employment history also was examined (*See* 38 RCNY § 15-07). Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum. In his seven years with the Department, Respondent Johnson has no

formal disciplinary record, has been awarded three medals for Excellent Police Duty, seven for Meritorious Police Duty, and has received consistently strong annual performance evaluations.

Respondent Johnson, who was appointed to the Department on October 7, 2015, has been found guilty of wrongfully pushing an individual without police necessity. The presumptive penalty for the wrongful use of non-deadly force resulting in no injury is 10 penalty days, and the mitigated penalty is five days. For this offense, the CCRB recommends the mitigated penalty of five vacation days.

As discussed above, Respondent's push of Nicholas Pinto was gratuitous and unreasonable, and there needs to be appropriate accountability. However, on balance, I agree with the CCRB that mitigation is warranted here. Respondent did not punch or kick Pinto, and there was no intent to injure; rather, he used minimal force, pushing Pinto one time from behind.

Additionally, under the unique circumstances presented here, where Respondent and his fellow officers were dealing with a violent crowd in an extremely challenging environment, I find that further mitigation than that provided by the Disciplinary Guidelines is warranted. This incident occurred in the midst of a series of protests, where Respondent Johnson was required to work 12-hour tours under extraordinarily stressful circumstances. Respondent Johnson described this period as "the darkest days that I have worked in this Department." (Tr. 213) This context, coupled with Respondent's otherwise strong record with the Department, warrants a lesser penalty for his push of Pinto. Taking into account the totality of the facts and issues in this matter, I recommend that Respondent forfeit three (3) vacation days.



Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jeff Adler".

Jeff S. Adler  
Assistant Deputy Commissioner Trials



## POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials  
To: Police Commissioner  
Subject: SUMMARY OF EMPLOYMENT RECORD  
POLICE OFFICER COREY JOHNSON  
TAX REGISTRY NO. 960090  
DISCIPLINARY CASE NO. 2021-24426

Respondent was appointed to the Department on October 7, 2015. On his three most recent annual performance evaluations, he was rated "Exceeds Expectations" for 2017, 2018, and 2019. He has been awarded three medals for Excellent Police Duty and seven medals for Meritorious Police Duty.

Respondent has no formal disciplinary history.

For your consideration.

Jeff S. Adler  
Assistant Deputy Commissioner Trials